

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)	Docket No. 95-ER-96A
)	
Preparation of the)	DRAFT ADDENDUM TO ER 96
<i>1996 Electricity Report (ER 96)</i>)	
)	(April, 1999)

DRAFT ADDENDUM TO ER 96 RE: NOI EXEMPTIONS

Public Resources Code section 25540.6(a) provides an exemption from the Notice of Intention (NOI) requirements for a natural gas-fired power plant that is the result of “a competitive solicitation or negotiation for new generation resources.” The Commission has reviewed requests for NOI exemptions on a case-by-case basis in accordance with Commission policies and procedures that were originally established in the 1994 *Electricity Report* and the Addendum to the 1994 *Electricity Report*, and that were continued in the 1996 *Electricity Report*. (See *ER 96*, p. 75, fn. 1.)

Recently, the Commission issued a precedential decision under Government Code section 11425.60 declaring that power sales by natural gas-fired power plant projects to the California Power Exchange (PX), other power exchanges, wholesale or retail marketers, direct access power markets, or other power consumers are the “result of a competitive solicitation or negotiation for new generation resources” within the meaning of Public Resources Code section 25540.6(a). (*Blythe Energy*, 98-SIT-2, Order No. 98-1104-04.) The Commission has granted an NOI exemption to each natural gas-fired merchant project (i.e., a project operating in a competitive market and not supported by ratepayer financial guarantees) that has requested an NOI exemption since the precedential decision in *Blythe Energy* was adopted.¹

While the precedential decision has reduced the time and resources required to process individual NOI exemptions, the Commission believes that it is possible and desirable to further

¹ See, *Three Mountain* (Docket No. 98-SIT-3); *Otay Mesa Generating Company* (Docket No. 98-SIT-4); *Delta Energy Center* (Docket No. 98-SIT-5); *Elk Hill Power Project* (Docket No. 98-SIT-6); *AES South City* (Docket No. 98-SIT-7); *AES Antelope Valley* (Docket No. 98-SIT-8); *Pastoria Power Project* (Docket No. 99-SIT-1); *Midway Sunset Cogeneration Company* (Docket No. 99-SIT-2); *Metcalf Energy Center* (Docket No. 99-SIT-3); and *Newark Energy Center* (Docket No. 99-SIT-4).

streamline the siting process. As the Commission stated in the *Blythe Energy* decision, gas-fired merchant power plants that participate in a competitive electricity market are presumed exempt from NOI requirements pursuant to Public Resources Code section 25540.6(a). (*Blythe Energy*, p. 17.) **ER 96**, however, states that the Commission will continue a case-by-case review of NOI exemption requests as established in the Addendum to **ER 94**. That procedural guideline appears inconsistent with the precedent adopted in *Blythe Energy*. Establishing a clear and direct policy and corresponding procedures for a unified approach to NOI exemptions would eliminate the need to expend effort on what has become a *pro forma* exercise.

Therefore, the Commission hereby amends **ER 96** by revising Footnote 1 at page 75 to establish a blanket NOI exemption for gas-fired merchant power plants. The case-by-case review process announced in the Addendum to **ER 94** is suspended. Hereafter, any proponent of a natural gas-fired merchant power plant project may file an Application for Certification (AFC) without applying for an NOI exemption. The AFC shall comply with the requirements of Public Resources Code section 25540.6(b) and all other applicable legal requirements.

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Dated: _____

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

-DRAFT-

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